

## CHAPTER 5 – CONSULTATION, COORDINATION, AND PUBLIC PARTICIPATION

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### 5.1 SUMMARY OF THE NEPA PROCESS

This section describes the NEPA Process. The BLM relies on the NEPA Handbook H-1790-1 as guidance for complying with NEPA and the Council on Environmental Quality's NEPA regulations (40 CFR Parts 1500-1508) and the Department of the Interior NEPA Manual.

#### Scoping Process

The BLM authorization of a Right-of-Way (ROW) grant for the proposed project or an action alternative would require a plan amendment (PA) to the California Desert Conservation Area (CDCA) Plan (BLM 1980), as amended. The BLM prepared the Draft EIS to inform the public about the DHSP and to meet the needs of federal, state, and local permitting agencies considering the project. Scoping is required by NEPA pursuant to the Council on Environmental Quality (CEQ) (40 CFR 1501.7) regulations. The process ensures that significant issues, alternatives, and impacts are addressed in environmental documents and determines the degree to which these issues and impacts will be analyzed in the EIS.

The scoping process includes the following:

- Publishing the Notice of Intent (NOI) to prepare an EIS.
- Conducting public scoping meetings and agency consultation meetings.
- Soliciting comments from the public.
- Documenting all public and agency comments received for the Proposed Action in a Scoping Summary Report (Appendix B).
- Utilizing the information received from the public and agencies to write the Draft EIS.

#### Notice of Intent

The BLM published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) on September 15, 2011 in Federal Register Volume 76, Number 179. Publication of the NOI began a 30-day comment period that ended on October 17, 2011. The BLM provided a website with project information that describes the various methods for providing public comment on the project including an e-mail address where comments could be sent electronically.

#### Public Scoping Meetings

Notification for public Scoping Meetings held on October 3 and October 6, 2011 was posted on the BLM's website. In addition, notices were sent to Responsible and Trustee Agencies under CEQA, all landowners within 300 feet of the project boundary, and other interested parties.

Public Scoping Meetings were held on October 3, 2011 at the University of Riverside Palm Desert Graduate Center located at 75080 Frank Sinatra Drive in Palm Desert, California and at the Lake Tamarisk Clubhouse located at 6251 Parkview Drive in Desert Center, California. A public Scoping Meeting was held on October 6, 2011 at the Joshua Tree Community Center located at 6171 Sunburst Street in Joshua Tree, California. A presentation describing the project was made by

enXco, with presentations describing the environmental review process presented by members of the BLM. Attendees were documented by signing in on a voluntary sign-in sheet, including 6 attendees plus KMIR TV at the University of Riverside Palm Desert Graduate Center, 30 attendees at the Lake Tamarisk Clubhouse, and 7 attendees at the Joshua Tree Community Center.

Fifteen comment letters were received during the scoping comment period that ended on October 17, 2011. Comments were received on the following categories: purpose and need, alternatives development, climate change, cultural resources, fire and fuels management, lands and realty, recreation, social and economic values, environmental justice, water resources, solid and hazardous wastes, visual resources, and cumulative effects. A summary of these comments is provided in the Scoping Summary Report (Appendix B). Comments received during the scoping process were addressed in the EIS as presented in Table 5-1.

**Table 5-1. Scoping Comments Addressed in the EIS**

<b>Issue Area</b>	<b>Addressed</b>
Purpose and Need	Section 1.2 BLM Purpose and Need
Monitoring	Appendix J Mitigation Monitoring and Reporting Plan pursuant to CEQA
Decommissioning	Section 2.5.7 Decommissioning Activities
Public Participation	Chapter 5 & Appendix B
<b>Air Resources</b>	
Existing conditions	Section 3.2.2
Project emissions	Section 4.2.6, Tables 4.2-3 through 4.2-8
Dust control	Section 4.2.6
Cumulative impacts	Section 4.2.15
Effects to Joshua Tree National Park	Section 4.2.6 and Section 4.17.15
<b>Biological Resources</b>	
Endangered species and habitat	Section 4.4.7
Desert tortoise & habitat	Section 4.4.7: Desert Tortoise
Biological opinion and USFWS	Section 4.4.7: MM WIL-2
Avian species	Section 4.4.7: Native Birds, Burrowing Owl, Golden Eagle, Raptors, Woodpecker, Paserines
Wildlife corridors	Section 4.4.7: Wildlife Movement
Mitigation lands	Section 4.3.7: MM VEG-6, Table 4.3-3
Sensitive Plant Species	Section 4.3.7: Special-Status Plants
Invasive Weeds	Section 4.3.7: Invasive Weeds
Sand Transport Corridor	Section 4.3.15: Alternative E
<b>Climate Change</b>	
Benefits of solar energy	Section 4.5.6 Operations and Maintenance
Address climate change and carbon footprint of the project	Section 4.5.6 Tables 4.5-1 and 4.5-2 and Indirect Effects
Mitigation to reduce greenhouse gas emissions	Section 4.5.6 Mitigation Measures
Amount of SF6 gases that would be released by the project	Section 4.5.6 GHG, Alternative 4
<b>Cultural Resources</b>	
Native American Consultation	Section 5 Consultation and Coordination

**Table 5-1. Scoping Comments Addressed in the EIS**

<b>Issue Area</b>	<b>Addressed</b>
Native American sacred sites	Section 4.6.6 Cultural Resources, Alt 4, and Section 5 Consultation and Coordination
Avoidance of cultural resources	Section 4.6.6, Cultural Resources, Alt 4
California Code §27460 should be followed in case of accidental discovery of human remains	Section 3.6.1, Cultural Resources Applicable Regulations, and Section 4.6.16 CEQA Considerations
<b>Fire and Fuels Management</b>	
Wildfire Risk	Section 4.8.6 Fire and Fuels, Alt 4
Fire study on cadmium-telluride containing panel	Section 4.13.6 Public Health and Safety, Alt 4
<b>Lands and Realty</b>	
Solar Programmatic EIS	Section 4.13.6: Public Health and Safety, Alt 4, Direct Effects
Conflicts with federal, state, tribal, or local land policies	Section 4.13.6 Public Health and Safety, Alt 4
Conflicts with the Eagle Mountain Pumped Storage Project	Section 4.13.6: Public Health and Safety, Alt 4, Direct Effects
Conflicts with rural communities	Section 4.13.6 Public Health and Safety, Alt 4
Conflicts with National Parks	Section 4.13.6 Public Health and Safety, Alt 4, and Section 4.17.15 National Park Service
BLM land management policy; role of County/CEQA	Section 1.2 BLM Purpose and Need, Section 1.8 CEQA Readers' Guide, and Section 4.13.6 Public Health and Safety, Alt 4
<b>Recreation</b>	
Impacts to Joshua Tree National Park	Section 4.14.6 Recreation, Alt 4, and Section 4.17.15 National Park Service
Impacts to Lake Tamarisk recreational opportunities	Section 4.14.6 Recreation, Alt 4
<b>Social and Economics Setting</b>	
influx of people to Desert Center	Section 4.15.6 Social and Economic, Quality of Life
Housing	Section 4.15.6 Social and Economic, Direct Effects
Property Values	Section 4.15.6 Social and Economic, Indirect Effects
Effects to utilities	Section 4.15.6 Social and Economic, Direct Effects
<b>Environmental Justice</b>	
Address environmental justice	Section 3.16 Recreation Affected Environment, and Section 4.16 Recreation Environmental Consequences
<b>Water Resources</b>	
Disclose water requirements	Section 2.5.5 Construction Water Requirements, Section 2.5.6 Operational Water
Impacts to groundwater basin	Section 4.20.6 Groundwater Supply and Recharge
Use of non-groundwater sources/water conservation	Section 4.20.6, MM WAT-2
Water quality/SWPPP	Section 4.20.6 Surface Water and Drainage Patterns, Water Quality, MM WAT-1 and MM WAT-4

**Table 5-1. Scoping Comments Addressed in the EIS**

<b>Issue Area</b>	<b>Addressed</b>
Minimize impacts to water/washes	Section 4.22.6 Surface Water and Drainage Patterns, Section 4.3.7 Hydrology and Groundwater
Jurisdictional delineation	Section 4.22.6 Jurisdictional Drainages, Section 4.3.2, Table 4.3-1 and MM VEG-1 through VEG-6
<b>Solid and Hazardous Waste</b>	
Hazardous wastes/management	Section 4.21.6 Solid and Hazardous Wastes, MM PHS-1 through PHS-6
Life cycle of panels/recycling	Section 4.13.6, Public Health and Safety, Alt 4, Hazardous Materials, AM-HAZ-10, MM PHS-1, MM PHS-6
Remediation of contaminated sites at solar facility/Phase I or Phase II Environmental Site Assessment	Section 4.13.6 Existing Contamination
Investigation of hazardous materials if buildings are being demolished	No buildings would be demolished (see Chapter 2 Project Description)
Soil Sampling/investigation	Section 4.13.6 Public Health and Safety, Alt 4, Existing Contamination
<b>Visual Resources</b>	
Impacts to wilderness character/Joshua Tree National Park	Section 4.19.6 Visual Resources, Effects Context for Joshua Tree Wilderness and National Park, KOP1 and KOP2
KOPs should depict all visual impact scenarios	Section 3.19.2 Visual Resources, Key Observation Points
Light Pollution	Section 4.19.6 Visual Resources, Alt 4, MM VR-6
<b>Cumulative Impacts</b>	
Consider all existing and reasonably foreseeable projects	Section 4.1.4 Cumulative Scenario, and Tables 4.1-1 and 4.1-2
Analysis should consider approved Desert Sunlight Solar Farm	Section 4.1.4 Cumulative Scenario, and Tables 4.1-1 and 4.1-2
<b>Alternatives</b>	
Types of panels	Section 2.5.4 Photovoltaic Panels
Environmentally sensitive areas	Section 2.7 Alternative 6: Reduced Footprint
Siting renewable energy on disturbed/degraded lands	Section 2.17.2 Alternative Sites
Comparison of alternatives	Section 2.14 Comparison of Alternatives
Environmentally preferred alternative	Section 2.14 Comparison of Alternatives, and Section 2.16 CEQA Environmentally Superior Alt.
Shared gen-tie line alignment	Section 2.10 Alternative B: Shared Towers
Desert wash avoidance	Section 2.7 Alternative 6: Reduced Footprint
Mount panels at a height to maintain natural vegetation	Section 2.17.10 Higher Mounted Panels Alt.
Distributed generation/power sited next to consumption	Section 2.17.4 Distributed/Rooftop PV
Avoid southwestern portion of project/avoids Desert Dry Wash Woodland/avoids siting within the WHMA	Sections 2.6 Alternative 5: Exclude WHMA, and Section 2.7 Alternative 6: Reduced Footprint
Make the site unavailable for energy development	Section 2.4 Alt 3: No Project
Reduce impacts to Joshua Tree National Park	Section 2.7, Section 2.8, and Section 2.17

## Draft EIS

The BLM published a Notice of Availability (NOA) for public and agency review and comment of the Desert Harvest Solar Project Draft EIS and CDCA Plan Amendment on April 13, 2012 in the Federal Register. A 90-day comment period is required, and was held, for the project and plan amendment, which ended on July 17, 2012. Comments were accepted by the BLM until July 20, 2012. All comments that were received by BLM were accepted.

## Draft EIS Public Information Workshops and Hearings

During the public review period, the BLM hosted public hearings to solicit input from members of the communities and others in the vicinity of the proposed project and alternatives. Information regarding the location and times of the meetings was published on the BLM's website for the project. In addition, a CEQA NOA was provided to the State Clearinghouse by a consultant on behalf of Riverside County, to anyone requesting notice, and to landowners within 300 feet of the project alternatives, including gen-tie alternatives, pursuant to PRC Section 21092.3 and CEQA Guidelines Section 15087(c).

Notifications for public scoping meetings regarding the Draft EIS were posted on the BLM's website. In addition, notices were sent to Responsible and Trustee Agencies under CEQA, all landowners within 300 feet of the project boundary, and other interested parties. Public information hearings were held on May 14, 2012 at the Lake Tamarisk Clubhouse located at 6251 Parkview Drive in Desert Center, California and at the Joshua Tree Community Center located at 6171 Sunburst Street in Joshua Tree, California. BLM representatives made a presentation describing the project. Attendees were documented by signing in on a voluntary sign-in sheet, including 13 attendees at the Lake Tamarisk Clubhouse, and 2 attendees at the Joshua Tree Community Center. A court reporter was present at both meetings to record all oral comments. A total of 37 comment letters containing a total of 552 discrete comments were received during the public comment period that ended on July 17, 2012. The comment letters are presented in Appendix M of the Final EIS; Appendix N provides a summary of and response to all comments. Table 5-2 provides a summary of the frequency of topics covered by the comment letters.

**Table 5-2. Comments Received on the Draft EIS**

Topic	Frequency of Comment
Affected Environment	3
Air Resources	20
Alternatives	34
Biological Resources – General	11
Biological Resources – Vegetation	48
Biological Resources – Wildlife	122
Climate Change	6
Consultation, Coordination, and Public Participation	7
Cultural Resources	49
Cumulative Scenario and Effects	12
Energy and Mineral Resources	2
Environmental Justice	3

**Table 5-2. Comments Received on the Draft EIS**

Topic	Frequency of Comment
Fire and Fuels Management	9
General	47
Lands and Realty	15
Mitigation Measures	9
NEPA and CEQA Requirements	6
Noise and Vibration	10
Paleontology	1
Public Health and Safety	2
Recreation	9
Requests for Information	5
Short Term vs. Long Term Productivity of the Environment	1
Social and Economics Setting	8
Soils and Geology	1
Solid and Hazardous Wastes	2
Special Designations	9
Transportation and Public Access	4
Visual Resources	29
Water Resources	59
Support for Alternative 1	2
Support for Alternative 3	3
Support for Alternative 3 with Modifications	1
Support for Alternative 4 with Modifications	1
Support for Alternative 6 with Modifications	1
Support for Alternative 7 with Modifications	1
Support for Alternative 4/7 Combination	1
Support for Distributed and Rooftop Photovoltaic Alternative	2
Opposition	7
Support	3
Support with Modifications	1

### Final EIS

The BLM considered each comment submitted on the Draft EIS and, as appropriate, used them to improve the clarity, content, and analysis presented in this Final EIS.

### Appeal Period and Protest

A protest is an opportunity for a qualified party (any person who participated in the planning process and has an interest which is or may be adversely affected) to seek an administrative review of a proposed plan amendment decision in accordance with program-specific regulations. The NOA published by the EPA for the CDCA Plan amendment in accordance with 43 CFR 1610.5-2. Specifically, the plan amendment decisions subject to protest are: (i) whether to find the project location suitable or unsuitable for solar energy development, and (ii) whether to allow

the project's gen-tie outside of a designated utility corridor. The protest period ends 30 calendar days after the publication of the Notice of Availability of the Final EIS in the federal register. Instructions for lodging a protest can be found online at: [http://www.blm.gov/pgdata/content/wo/en/prog/planning/planning\\_overview/protest\\_resolution.html](http://www.blm.gov/pgdata/content/wo/en/prog/planning/planning_overview/protest_resolution.html).

### **Governor's Consistency Review**

Pursuant to 43 C.F.R. § 1610.3-2, prior to the approval of a proposed resource management plan, or amendment, the BLM State Director must submit to the State Governor the proposed plan or amendment and identify any known inconsistencies with State or local plans, policies or programs. The Governor has 60 days in which to identify inconsistencies and provide recommendations in writing. If the Governor's written recommendations include changes in the proposed PA that were not raised during the public participation process, then the State Director must provide the public with an opportunity to comment on the recommendations. If the BLM State Office does not accept the Governor's recommendations, then the BLM State Director must notify the Governor in writing and the Governor has 30 days to submit a written appeal.

### **Record of Decision**

After any protests have been resolved, BLM may publish a Record of Decision (ROD) with either an Approved Plan Amendment or no Plan Amendment. Publication and release of the ROD would serve as public notice of the BLM's decision on the project application which is appealable in accordance with 43 CFR Part 4.

## **5.2 ORGANIZATIONS AND PERSONS CONSULTED**

There are a number of formal and informal agreements in place that provide guidance on the relationship between BLM, as Lead Agency on the EIS, and other agencies. These agreements are summarized here.

### **BLM–County of Riverside Memorandum of Understanding**

The County of Riverside has discretionary authority to issue a Conditional Use Permit (CUP), a Public Use Permit (PUP), a Franchise Route Agreement, and an Encroachment Permit for Project gen-tie, evaluated herein as a portion of the Proposed Action. As allowed by the California Environmental Quality Act (CEQA) Guidelines Section 15221, the County of Riverside intends to use this EIS to provide the environmental review required for its decision regarding the approval of the gen-tie under CEQA. The County of Riverside and the BLM have signed an MOU that defines the relationship of the two agencies, and identifies the County of Riverside as a cooperating agency with the BLM. The MOU was fully executed on June 5, 2012. The MOU is included as Appendix L of this EIS. Following preparation of the EIS by the BLM, the County of Riverside will determine whether the EIS complies with the requirements of CEQA and whether it will be used to support its decision on the gen-tie. The County of Riverside was invited by BLM to weekly phone conferences as the EIS was developed. The County was invited to participate, and participated in, the development of the EIS from the date of the Notice of Intent.

### **Native American Government to Government Consultation**

The BLM initiated formal, government-to-government tribal consultation at the earliest stages of project planning by letter on October 4, 2011 (Kalish 2011). The Palm Springs-South Coast Field Office of the BLM sent letters to 15 Indian tribes, including those identified by the NAHC. The letter requested assistance in identifying any issues or concerns that a tribe might have about the project, including identifying places of religious and cultural significance that might be affected by the proposed project. The letter further requested that each Tribal Government identify those tribal representatives who have been designated to consult with BLM on this project.

Since that time, the BLM has followed up with Tribal governments through additional correspondence, communication, and provision of other project information.

The fifteen tribes currently being consulted with on the DHSP are: Agua Caliente Band of Cahuilla Indians, Augustine Band of Cahuilla Mission Indians, Cabazon Band of Mission Indians, Cahuilla Band of Mission Indians, Chemehuevi Indian Tribe, Cocopah Indian Tribe, Colorado River Indian Tribes, Fort Mojave Indian Tribe, Fort Yuma Quechan Indian Tribe, Morongo Band of Mission Indians, Ramona Band of Mission Indians, San Manuel Band of Mission Indians, Soboba Band of Luiseno Indians, Torres-Martinez Desert Cahuilla Indians, and the Twentynine Palms Band of Mission Indians.

On May 9, 2012, BLM and Native American Tribes conducted a field visit to the project site. Representatives from the Augustine Band of Mission Indians and the Colorado River Indian Tribes attended. Tribal representatives expressed the concerns about the geomorphological nature of the project site, and the possibility of subsurface archaeological materials. The archaeological report was approved by the BLM in May 2012. A letter was sent to the Tribes on June 4, 2012 informing them of the availability of the report. Agua Caliente Band of Mission Indians, Colorado River Indian Tribes, and Fort Yuma Quechan Tribe requested a copy of the report. Copies were sent on August 2, 2012, June 11, 2012, and October 22, 2012 respectively. The project was discussed with the Fort Yuma Quechan Tribe on September 26, 2012.

Additional documentation regarding that consultation is provided in Appendix I. Consultation with Indian Tribes, and discussions with Tribal organizations and individuals, has revealed concern about the importance and sensitivity of cultural resources near the DHSP project site, concern about cumulative effects to cultural resources and landscapes.

As the environmental review and Section 106 consultation processes proceed for the DHSP, the BLM will continue to consult with Indian tribes regarding issues or concerns with the project, and on properties to which they attach cultural or religious significance.

### **Section 106 Consultation and Memorandum of Agreement**

The Native American Heritage Commission (NAHC) maintains two databases to assist cultural resources specialists in identifying cultural resources of concern to California Native Americans, referred to here as ethnographic resources. The NAHC Sacred Lands database has records for places and objects that Native Americans consider sacred or otherwise important, such as cemeteries and gathering places for traditional foods and materials. The NAHC Contacts database has the names and contact information for individuals, representing a group or themselves, who have expressed an interest in being contacted about development projects in specified areas. The applicant requests information from the NAHC on the presence of sacred lands in the vicinity of



a proposed project and also requests a list of Native Americans to whom inquiries would be made to identify both additional cultural resources and any concerns the Native Americans may have about a proposed project.

Chambers Group contacted the Native American Heritage Commission (NAHC) in October of 2011 to obtain information on known cultural resources and traditional cultural properties and to learn of any concerns Native Americans may have about the DHSP. The NAHC responded on October 5, 2011 with the information that the Sacred Lands File (SLF) database failed to indicate the presence of Native American cultural resources within the DHSP Area of Potential Effects. The NAHC also forwarded a list of Native American groups or individuals with traditional ties to the project area. This list can be found in Appendix I.

On October 10, 2012, BLM held a meeting of the consulting parties for the Section 106 process for the DHSP. Representatives from the Agua Caliente Band of Cahuilla Indians, Augustine Band of Cahuilla Indians, Cabazon Band of Mission Indians, Colorado River Indian Tribes, Fort Mojave Indian Tribe, San Manuel Band of Mission Indians, Soboba Band of Luiseno Indians, and Twenty-nine Palms Band of Mission Indians attended the meeting. The other consulting parties in attendance at the October 10 meeting included the Applicant and the County of Riverside.

A Memorandum of Agreement (MOA) is being developed for this project as a part of the Section 106 process. The MOA would be among the BLM, SHPO, EDF Renewables, and interested Indian tribes. The Advisory Council on Historic Preservation would be invited to participate. The MOA will include a list of historic properties located within the APE, require that a Historic Property Treatment Plan be developed and implemented prior to the issuance of a Notice to Proceed, provide for review by interested parties of draft documents resulting from implementation of the Historic Property Treatment Plan, provide for the management of unanticipated discoveries of cultural resources, address treatment of Native American human remains, and include reporting requirements. In addition, the MOA provides a phased approach to the identification and evaluation where access to private land to conduct archaeological surveys has not been granted. NRHP eligibility evaluations and treatment of historic properties would be carried out before Project construction. Once the MOA is signed, which will be before the ROD for this EIS is signed, compliance with Section 106 of the NHPA will be considered complete (Kalish 2012).

### **National Park Service Consultation**

The National Park Service (NPS), Joshua Tree National Park, is a Cooperating Agency for preparation of this EIS. The NPS and the BLM have signed an MOU that defines the relationship of the two agencies, and identifies the NPS as a cooperating agency with the BLM. The MOU was fully executed on February 24, 2011. The MOU is included as Appendix L of this EIS. Although NPS has no discretionary decision to issue on the proposed project, NPS has an interest in land development projects that occur within the airshed and viewshed of park resources. On April 20, 2011, BLM met with NPS representatives in Palm Springs, CA to discuss the project and the Cooperating Agency relationship. The NPS was invited by BLM to weekly phone conferences during the development of the EIS process. BLM met with NPS again on September 13, 2011 to discuss incorporation of NPS comments on the administrative draft of the EIS. Comments were received from NPS staff and incorporated into the Draft EIS. The BLM

again met with NPS representatives in Joshua Tree, CA on June 20, 2012 to discuss the Park's preliminary response to the Draft EIS. The Park also submitted formal written comments, which are presented in Appendix M of this Final EIS (see comment letter A004). Comments from NPS staff were accepted and incorporated into this Final EIS.

### **Federal Endangered Species Act**

The BLM is engaging the U.S. Fish and Wildlife Service (USFWS) in the Endangered Species Act (ESA) Section 7 consultation process related to the project concurrently with the NEPA review process. As explained in Sections 3.3 and 3.4, Biological surveys for federally-listed species were completed for the proposed project site and the proposed transmission alternatives prior to preparation of this Final EIS.

BLM submitted a Biological Assessment and a request for formal ESA Section 7 consultation on the proposed project to USFWS on May 8, 2012. Consultation was initiated on June 13, 2012 with a letter from USFWS to BLM (see Appendix C.19 of this Final EIS). In this letter, USFWS requested clarifying information on the project description prior to August 10, 2012. The supplemental clarifying information was submitted to USFWS in the form of a Supplement to the Biological Assessment on July 27, 2012. As of the date of publication of this Final EIS, a Biological Opinion has not been completed by USFWS. BLM will require a final Biological Opinion covering the project prior to its making a final decision on the project.

The USFWS also submitted formal written comments on the Draft EIS, which are presented in Appendix M of this Final EIS (see comment letter A008). Comments from USFWS staff were accepted and incorporated into this Final EIS.

### **Bald and Golden Eagle Protection Act**

BLM coordinated with USFWS regarding the project's potential to take golden eagles from just after the issuance of the Notice of Intent through the preparation of the Final EIS. The BLM considers the development of a Bird and Bat Conservation Strategy to be a viable option to reduce effects of the project on golden eagles. Per Instructional Memorandum 2010-156, a letter of concurrence must be sought by BLM and received from the USFWS that addresses the adequacy of the Bird and Bat Conservation Strategy (formerly known as an Avian Protection Plan [APP] or Avian and Bat Protection Plan [ABPP]). The Applicant has prepared a Draft Bird and Bat Protection Strategy (included as Appendix C-9 of this EIS) to minimize effects on golden eagles. The Applicant is not seeking a permit under the Bald and Golden Eagle Protection Act as take is not anticipated. The USFWS has provided comments on the Draft Bird and Bat Conservation Strategy, and has requested revisions to the strategy prior to issuing a letter of concurrence to BLM.

### **California Endangered Species Act**

California Endangered Species Act (CESA) review and approval is required for impacts to State-listed species. Focused biological surveys for sensitive species have been conducted for all potential project areas. The California Department of Fish and Game (CDFG) is expected to complete a Consistency Determination based upon USFWS's Biological Opinion. The CDFG submitted formal written comments on the Draft EIS, which are presented in Appendix M of this

Final EIS (see comment letter A012). Comments from CDFG staff were accepted and incorporated into this Final EIS.

### **Other Agency Coordination**

The Applicant is coordinating with the U.S. Army Corps of Engineers (USACE), regarding potential project approvals and any associated NEPA regulatory compliance requirements. On May 29, 2012, the USACE provided its Jurisdictional Determination that the DHSP site has no waters of the United States (see Appendix C.11). Additionally, the Colorado River Basin Regional Water Quality Control Board (Region 7) has indicated that 401 Water Quality Certification is not necessary (see Appendix C.11). The Applicant is also coordinating with state and local agencies, including the California Energy Commission, California Department of Transportation, Metropolitan Water District of Southern California, California Regional Water Quality Control Board, and South Coast Air Quality Management District regarding potential project approvals and any associated State and local regulatory compliance requirements.

The BLM and the Applicant are engaged in ongoing coordination with the Federal Energy Regulatory Commission (FERC) regarding access and use restrictions of a FERC exclusion area intercepting the southern parcel of the DHSP.

## **5.3 SUMMARY OF COMMENTS RECEIVED ON THE DRAFT EIS**

The Final EIS and proposed PA presents a summary of comments received on the Draft EIS in Appendix N. The comments received on the Draft EIS are presented in full in Appendix M.

## **5.4 ADMINISTRATIVE REMEDIES**

The BLM and the EPA's Office of Federal Activities will publish separate NOAs for the Final EIS/Proposed PA in the Federal Register when the document is ready to be released to the public. The NOA (that is published by the EPA in the Federal Register) will initiate a 30-day protest period on the Proposed PA. Protests are directed to the Director of the BLM (see "Appeal Period and Protest" in Section 5.1, above) in accordance with 43 CFR 1610.5-2.

Following resolution of any plan amendment protests, the BLM will publish a ROD, which may deny the Proposed Action or approve the project as proposed or with modifications. If the ROD approves the project, the BLM will also modify the CDCA Plan, as applicable. Publication and release of the ROD would serve as public notice of the BLM's decision on the project application which is appealable in accordance with 43 CFR Part 4.